

With new Council funding rules, equity, if not peace-of-mind

Jonah Smith

December 11, 2014

Politics and Policy (Edsall, Fall 2014)

In 2010, then-New York City Councilmember Larry Seabrook [was indicted](#) on 13 counts related to public corruption. An investigation by the US Attorney in New York and the New York City Department of Investigation had uncovered a complex scheme of embezzling and deception operating through a network of non-profit organizations controlled by Seabrook involving over \$2 million in City Council funds over the seven years he held office.

Hidden among funding for organizations like Mind Builders Creative Arts Center, which provides arts programming for youth, and the New York Botanical Garden, which was establishing a Bronx-wide program to establish community gardens, was funding for [three organizations](#) managed by a consultant who had worked for Seabrook in the past. These organizations paid salaries to Seabrook's acquaintances.

"He was a flagrant and serial abuser of City Council discretionary funds in a far too familiar New York tale of corruption," said US Attorney Preet Bharara in [a statement](#) announcing Seabrook's sentencing.

Seabrook's indictment occurred in the middle of a wave of cases brought by the US Attorney against City Councilmembers, their staffs and their affiliates. Between 2010 and 2013, eight individuals, including four City Councilmembers and affiliates or staffers of two more, had been indicted on charges of misusing city funds.

All of those misused funds came from a small but sizable part of the New York City expense budget called discretionary funds. Though less than one percent of the total city budget, discretionary funds totaled over \$290 million in Fiscal Year 2015. These funds, also called [Member Items](#), are allocated to councilmembers by the Speaker each year to invest as they please in local non-profit organizations that provide services in their districts.

Over the last few years, discretionary funds have come under scrutiny from New York City politicians and good government groups for their role in internal Council politics and the public corruption cases brought by the US Attorney in Manhattan.

In May, the New York City Council unanimously passed [a resolution](#) aimed at addressing some of the concerns. Months later, the discretionary funding is being spent, and an analysis of the new rules and the latest [city budget data](#) suggest that while the changes

have evened the distribution of the funds allocated to districts, they have done little to curb the potential for misuse or to change spending patterns.

The biggest changes are mandatory memos from organizations that received funding describing how they used it and a requirement that the Speaker develop a formula for either distributing discretionary funds evenly, or distributing them based on levels of need, or some combination. The exact formula is to be decided by the Speaker for each year's budget. The Speaker's spending is also now capped at 50 percent of the total spending.

This year, that meant equal funding for all Councilmembers in the local initiatives, aging and youth categories. The Speaker [decided](#) to give up to \$100,000 extra to districts based on their levels of poverty. Her district, [along with four others](#), received the maximum amount of extra funding.

Much of the existing system remains in tact, however. Nonprofit organizations apply for funding directly to individual Councilmembers early in the calendar year. Applicants are screened in an opaque process by only the [Mayor's Office of Contract Services](#). That office is said to evaluate the legal nonprofit status of organizations; the organizations' ability to provide the services they are asking for funding to provide; and, for organizations requesting over \$10,000, the organizations' track record in providing services to previous funding sources, as gauged by references.

The level of attention the Mayor's Office of Contract Services is able to pay for each application is unclear. The FY2014 [disclosure of discretionary funding applications](#) has 2,782 unique entries in the "Legal Name of Organization" field. Even assuming some mistyped duplicates, if each organization took only five minutes to review, it would take an individual more than five work weeks to complete. Considering every application separately, that figure explodes to 46 weeks.¹

The changes fall neatly in line with suggestions made by the better government group Citizens Union in a [2012 report](#). In it, Citizens Union argued that while discretionary funds are a vital source of revenue for community organizations, and the system is fundamentally sound, the distribution of the funds is politicized and inequitable.

While running for mayor in 2013, Bill de Blasio took a different stance. Though he too objected to the politicization of the distribution of funds, he said the issues ran deeper. Referencing the US Attorney's case against a City Councilmember earlier that year, de Blasio called for the complete abolishment of discretionary funding.

"The system is broken," his [campaign website](#) read on election day. In office, de Blasio pledged to "use his power in the budget process to demand a ban on the member item system."

¹(2500 nonprofits*5 minutes each)/60 minutes in an hour/40 hour work week = 5.2 work weeks. (22097 applications*5 minutes each)/60 minutes in an hour/40 hour work week = 46.04 work weeks.

Despite his vehemence on the campaign trail, Member Items remained on the Executive Budget when it was formally announced. At the press conference, de Blasio fielded a question about discretionary funding: "Look, the Council and I continue to [agree to disagree](#)." ([Transcript](#))

Though the Council's resolution addresses the politicization of the distribution of discretionary funding, the issue of fund misuse has gone largely overlooked. The US Attorney's office says it has remained vigilant.

"The public corruption program is active," said James Margolin, Chief Public Information Officer for US Attorney Preet Bharara in a recent phone interview. He chuckled. "It's a target-rich environment."

Discretionary funding reform

Discretionary funds gain their legal force through a brief entry in the City's [Procurement Policy Board Rules](#) (accessed December 3, 2014), which exempts line-item or discretionary funding by elected officials other than the mayor or comptroller from the competitive bidding process typically required for city contracts.

Discretionary funds are separated into spending categories including local initiatives, aging and youth, as well as any other initiatives developed by the Council each year. A certain amount of money from each category is allocated to individual Councilmembers each year; portions of the funds are also distributed by the delegations from each of the boroughs, as well as 'speaker items,' which are distributed by the Speaker of the Council. Speaker funds have traditionally accounted for around 40 percent of the total discretionary spending in a given year.

The new resolution on discretionary funding is only the most recent in a string of resolutions aimed at addressing past concerns. In 2006, under Speaker Christine Quinn, the Council began distributing spending information to the public [for the first time](#) via its website. The so-called Schedule C document outlines all Council discretionary funding, itemized within categories and identified by organization and Councilmember, and is still released every year.

As cases brought by the US Attorney against City Councilmembers piled up in 2008, Quinn [announced](#) a series of best-practices for the budget-making process, including pre-screening of organizations and fiscal conduits (organizations that accept funding on behalf of small non-profits that lack the accounting resources to accept it themselves) by the Mayor's Office of Contract Services for funding requests over \$10,000 and an "internal Council staff." The new best practices also required conflict of interest disclosures to be signed by both the Councilmembers and organizations, and included a stipulation that the Schedule C document be made available at least 24 hours before the vote. ([Some reports](#) indicate that Schedule C documents had previously been handed out in the early hours of the morning, minutes before the final vote.) The changes were not, however, written into the Council Rules.

In collaboration with the New York City Commissioner and the Department of Investigation, Quinn [called for more changes](#) in 2010, including the creation of an online application system and a searchable web database of the applications and spending decisions. The new guidelines also required additional information from organizations that had not received funding in the last two years.

In May 2012, Citizens Union released its [report](#) on discretionary funding, which analyzed spending data from FY2009 to FY2012. Their analysis highlighted the inequitable distribution of funds, the levels of which did not correlate with any measure of need, along with the amount of money controlled by the Speaker through Speaker Items and council-wide initiatives. They also found that Councilmembers who later ran in city-wide elections spent a higher percentage of their funding in boroughs outside their own than those who did not run, suggesting that the money was being used toward political ends.

In their recommendations, Citizens Union advocated formalizing the transparency rules implemented by Quinn; increasing objectivity and equity of allocations by using a formula that takes into account socioeconomic conditions in the districts; increased transparency, particularly in the disclosures on how funds are to be used and making the spending information available online 72 hours before a vote; and greater innovation in how the funds are used to evaluate innovative pilot programs.

The reforms enacted by Quinn earlier in her term were [formalized](#) in the City Rules in October 2012. The change followed one of the Citizens Union suggestions, to codify the existing rules, but did not address the other three. Those would be addressed two years later, under Speaker Melissa Mark-Viverito.

The October 11, 2012 [hearing transcript](#) shows there was no discussion of the rule as it passed through the Committee on Rules, Privileges and Elections. Citizens Union provided the only testimony at the hearing, a [brief statement](#) in support of the bill, which the Union said codified rules it helped establish. In the stated meeting, the resolution was approved unanimously, with little discussion other than laudatory comments and one call for parity in the distribution of funds. The resolution's role in reducing misuse was not discussed during the proceedings.

All of this legislative action did not hold back the flood of cases against Councilmembers and their affiliates coming from the US Attorney's office. Before Seabrook's indictment in 2010, the chief of staff and a former staffer of Brooklyn Councilmember Kendall Stewart [were sentenced](#) for directing discretionary funds to a charity owned by their boss. Two family members of Bronx Councilmember Maria del Carmen Arroyo, who is still in office, [were sentenced](#) for a scheme involving the use of funds from a nonprofit affiliated with Carmen Arroyo for personal and political ends.

Two years after Seabrook's indictment, in 2012, Queens Councilmember Hiram Monserrate was [indicted](#) for directing funds to an organization that he used to fund his unsuccessful bid for New York State Senate. ([Gotham Gazette](#), the news outlet owned by Citizens Union, reported that Monserrate publicly discussed proposing a bill in 2008 to increase transparency in funding requests.) That same year, Queens Councilmember Daniel Halloran was [indicted](#) for accepting bribes in exchange for agreeing to steer money to a particular nonprofit.

Many of these cases concerned misuse that occurred before the new rules were passed. Halloran's bribery scheme, however, took place entirely after Quinn's new rules were in place. In theory, the mandatory disclosure of conflict of interest should have stopped him. Halloran's case was also the one referenced on the Council's website.

At the beginning of each legislative session, the [New York City Charter](#) requires the City Council to adopt governing rules.² When the new City Council took office in 2014, under the guidance of Speaker Melissa Mark-Viverito, a [resolution](#) was passed making minor changes. Among them were changes to the allocation scheme for discretionary funds that left the general process intact.

About a month after the new Council took office, in late February 2014, the Committee on Rules, Privileges and Elections held a [hearing](#) to present their preliminary suggestions for changes to the Council Rules. The language of the changes had not been drafted, but first on their list of goals was to "take the politics out of Member Items."

Included in the proposals are developing an objective, publicly-available formula for allocating discretionary funds; making the applications for funding available via a searchable database; and capping speaker's items at 50 percent of the total funding.

By the time this formal proposal was released, though, the agenda had already been set for nearly three months. On October 30, 2013, Brooklyn Councilmember Brad Lander, who is the head of the progressive caucus, announced via a [press release](#) that a group of 32 Councilmembers had come to a consensus on rules reform. The release includes statements of support from good government groups Common Cause, Citizens Union and the New York Public Interest Research Group. It is unclear how this agenda was determined at these meetings. The proposals, particularly the description of the allocation scheme as 'political' and the call for a publicly available formula to determine funding, bear many similarities to the proposals in the 2012 Citizens Union report.

Citizens Union released a [statement of its own](#) twenty days later, suggesting, based on questionnaires filled out by candidates during the election, that the majority of the Council would support the rules reform changes.

The preliminary proposal of the Committee on Rules, Privileges and Elections in late February included, verbatim, the proposed changes to discretionary funding allocation from the agreement months earlier.

Records of the [written](#) and [oral](#) testimonies that day show that unlike 2012, the 2014 meeting gained an overwhelming amount of attention from advocacy groups and nonprofits. Twenty-one individuals representing organizations attended to address the Committee, of whom 11 discussed the Member Item reforms.

Among the groups that delivered testimony were good government groups Common Cause, the New York Public Interest Research Group, Citizens Union and the Advocacy Institute. They sat together on a panel during the hearing, but submitted separate written testimony.

²See section 46.

Susan Lerner, Executive Director of the liberal good government group Common Cause, spoke first.

"Common Cause is not a fan of Member Items," she said. "But I won't belabor that discussion." She offered general support for the priorities set out by the Council, and suggested some specific changes to Member Items, including restrictions on the use of Speaker Items and objective procedures for councilmembers to distribute funds within their districts that incorporate community input. Her suggestions also included a separate source of funding for the arts.

Gene Russianoff, an attorney and registered lobbyist for the New York Public Interest Research Group, better known for his lobbying of reform on public transportation, spoke next. He delivered a short statement of strong support for the bill, referencing in particular his support for "taking the politics out of" Member Items.

Dick Dadey, Executive Director of Citizens Union, congratulated the committee for helping to craft the agenda for the session of Rules Reforms, referencing the October 30 meeting and suggesting that Citizens Union influenced the proceedings. (The nature of their involvement is not clear.) They suggested a specific allocation scheme involving half of the funds be distributed evenly, and half according to a needs-based formula. They also supported capping the Speaker Items to half of the total allocated to other Councilmembers.

The representative of the Advocacy Institute did not discuss Member Item reform.

Following these presentations, Brooklyn Councilmember Jumaane Williams expressed his support for Member Items. He cited his experience in nonprofit work. (The [biography](#) on his website mentions three nonprofit organizations he has worked for as a community organizer and executive director.) He asked the panel about particular allocation schemes.

Then Williams asked a more fundamental question: should the 'discretion' be taken entirely out of discretionary funding? Dadey, speaking on behalf of Citizens Union, said no. Lerner, speaking on behalf of Common Cause, said the goal was to "minimize" discretion.

After discussion on other changes, Queens Councilmember Ruben Wills brought the conversation back to discretionary funding, arguing that they are important to small charities and urging his colleagues not to support eliminating them.

"A lot of people are screaming 'competitive grant, competitive grant' but I think that's code word for moving minorities and small groups out of the equation," he said. Both Dadey and Russianoff restated their support for Member Items. Common Cause did not comment.

Four months later, Wills would be [arrested](#) for embezzling funds from New York State. In FY2015, control over his discretionary funds were given to the rest of the Council.

The discussion that followed centered around the formula used to distribute the funds and to what extent it should be equal or needs-based. Members from districts that show little

demographic need argued their districts contain organizations that provide citywide services or have pockets of poverty that would go unserved.

Good government organizations were followed by several nonprofit organizations. For most of these organizations, member items were the only topic discussed in the testimony. Common among those nonprofits was concern about the future of the funds.

"I know that we are not discussing the total elimination of these funds," said a representative written statement from Shorefront Jewish Community Council, addressing the Committee members, "but I wanted to make sure to express that if funding such as this is eliminated, it would only hurt the most needy in your districts."

Others, such as Esteban Duran representing El Puente, a community organization based in Brooklyn, offered specific suggestions, including requiring objective and transparent criteria for Councilmembers to distribute funds in their districts.

At no point in the three-hour-long proceedings were the examples of misuse of Member Items mentioned.

Two months after the initial hearing, the Committee on Rules, Privileges and Elections released [a report](#) on the proposals it had suggested. The report included a survey of the Councilmembers on what reforms they believed were most important. Ten proposals were listed, out of which "Fair & objective formula for discretionary funding" ranked fourth. Ranked eighth was the requirement that recipients of council discretionary funds "provide a short annual report of accomplishments with Council funding." Increasing transparency was ranked last. Efforts to reduce misuse of Council funds were not mentioned.

The survey also asked about ideal solutions to some of the challenges. Eighty percent of respondents said they supported annual reports. For expense Member Items (that is, those that go to non-profits, as opposed to infrastructure), Councilmembers preferred a combination of equal distribution of funds and need-based funding, rather than exactly equal distribution or purely need-based funding, though that did not represent the majority (43 percent). The second most popular option was exactly equal distribution across the council.

The draft proposal presented at the hearing requires machine readable files of discretionary funding items to be made available on the council website and requires recipient organizations to file summaries of how they used their funding. It also requires the Speaker to develop an allocation plan that distributes the funds evenly across the council, or using a (publicly available) formula based on statistical differences between districts, or some combination of the two. The Speaker's funding was also capped at one half of all spending allocated to the rest of the council.

The second hearing attracted far fewer attendees. Six individuals delivered testimony on behalf of their organizations at the [committee hearing](#) on May 7, two of which, Common Cause and Citizens Union, discussed the changes to discretionary funding.

Common Cause submitted its written testimony too late to be logged onto council record, but it was obtained for this story. The section on discretionary funding is identical to that

submitted at the February hearing, and the oral testimony delivered by Susan Lerner was similar as well.

Alex Camarda, Director of Public Policy and Advocacy at Citizens Union, testified next and offered more suggestions. Citizens Union expressed its overall support and provided line-edits of the proposed changes. The line edits add a policy of releasing, online, 72 hours before the vote, itemized discretionary funding information and any formulae used to determine allocations. This was noted as its top priority. Citizens Union also suggested that the summaries of how the funds were used--that would in the future be required of organizations--be made available in a searchable online database.

The next week, the Committee on Rules, Privileges and Elections provided its revisions to the rules resolution from the previous week. The discretionary funding section went unchanged. That day, the committee brought the resolution to the Council floor, where it was unanimously adopted.

Changes

Under the new rules, the Speaker's spending plan must distribute funds evenly to councilmembers or create a formula applied to every Councilmember for distributing funds according to the level of need in the community.

This year, Speaker Mark-Viverito designated \$400,000 to each Councilmember for local initiatives, \$100,000 for domestic violence initiatives, \$150,000 for youth initiatives and \$110,000 for aging initiatives.

Councilmembers also received up to an additional \$100,000 (either \$0, \$25,000, \$50,000 or \$75,000) to address poverty. The amount was determined using the 2012 five-year American Community Survey.

Initiative	Allocation per Councilmember
Local	\$400,000
Poverty	up to \$100,000
Domestic Violence	\$100,000
Aging	\$110,000
Youth	\$150,000

Overall, this amounted to over \$36.6 million for local initiatives, \$2.8 million for poverty initiatives, \$7.8 million for domestic violence initiatives, \$5.6 million for aging initiatives and \$7.6 million for youth initiatives. Spending in each of these categories remained about the same from FY2014 to FY2015, although there was a \$5 million increase in domestic violence initiatives, and the poverty initiative was a new addition this year.

Total spending in FY2015 was down \$103.3 million. Much of the difference came from a combination of reduced allocations to Councilmembers and reduced allocations to the

group of Councilmembers representing the boroughs, called delegations. These delegations spent a total of \$2 million this year, down from over \$12 million last year.

Kelly Mathews, Chief Operating Officers of the New York Council of Nonprofits, a group [billing itself](#) as the "'Soapbox and Toolbox' for New York's Nonprofits," said the reduction in funding is not likely to have huge effects on the nonprofit community in New York City because many of the organizations that receive them are small.

"For a lot of them, discretionary funding may be 50 percent of their operating budget for the year, so the money is critical for allowing those services to be provided," she said in a recent phone interview.

Mathews also said the reduction in the discretionary portion of the budget has been offset by other parts of the budget, opening possibilities for nonprofits to compensate for a loss in discretionary funding levels with grants received through the standard procurement process. Again, she said, this will present the biggest challenges to the smallest nonprofits that may not have the staff to ensure compliance with city rules, which are generally more stringent for city competitive grants.

The reallocation equalizes delegation spending per citizen, but at levels much lower than FY2014. Whereas in FY2014 the spending per person varied from \$0.60 per person in Manhattan to \$4.89 per person in Staten Island, in FY2015 each borough's delegation spent about \$0.25 per person.

These values translated to lower levels of funding across the city compared to FY2014. Manhattan Councilmembers saw the largest reduction in funding, receiving nearly 50 percent less funding in FY2014 compared to FY2015. Staten Island Councilmembers saw the smallest drop with a 15 percent reduction in funding.

Bronx Councilmember Palma had the largest loss of funding of any incumbent councilmember, receiving \$247,651 less than last year, a 7 percent drop. Palma was not present during the vote on the new rules, but Chief of Staff Mariela Salazar said Palma did not support the lowering of discretionary funding levels.

"Many groups were upset that their funding was either cut or reduced since some rely heavily on Council funding," wrote Salazar in an email recently. Still, she noted, other parts of the budget filled in gaps by funding new initiatives.

In all, [15 districts](#) received less funding than last year, with an average loss of nearly \$226,000.

On the other hand, 36 councilmembers received an average of almost \$158,000 more in discretionary funding as a result of the new rules, according to an [analysis](#) by Gotham Gazette.

Spending patterns for the funds, however, have not changed much. In their 2012 report, Citizens Union disapproved of use of council funds outside of the districts for which they are intended. Though they point out some legitimate uses (for example, funding organizations that provide services throughout the city), they suggest that the practice could lead to political considerations for Councilmembers with city-wide ambitions.

In fact, under the new rules, a [larger percentage of funding](#) allocated to each of the boroughs is spent outside that borough. This is despite the fact that FY2014 was drafted during an election year.

Continued skepticism

Despite the many efforts at reform over the last decades, liberal good government group Common Cause New York is officially opposed to the discretionary funding system.

"Political distribution of discretionary funding should be replaced by a uniform system of distribution based on objective criteria," reads Common Cause's written statement. It proposes a method where the decision-making power is ceded to city agencies, which would evaluate applications and consider the recommendation of Councilmembers before allocating funds.

If the system is to remain in place, though, Common Cause's statement calls for an evaluation of the screening procedure, which they say has been subject to inefficiencies and lack of transparency. "We recognize and applaud the anti-fraud measures which were previously adopted to insure [sic] that recipients of discretionary funding were qualified," said the statement. "However, we recommend that the procedure for clearance of non-profit organizations be evaluated." It does not address the effectiveness of these "anti-fraud measures."

"We tend to be skeptical about Member Items," said Kelly Mathews, the COO of New York Council of Nonprofits, in a phone interview.

Mathews also conducts training sessions for organizations that receive discretionary funding at the Mayor's Office of Contract Services, the same office that evaluates organizations that apply for discretionary funds. She said she believes the screening procedures have become more rigorous over time, and that cases of misuse will fall in the coming years. Aside from general guidelines on what is to be evaluated, the screening process is not addressed in legislation.

"If anyone wants to steal funds, regardless of the oversight, it's going to be challenging to prevent people from doing it," said Mathews. Still, she added that misusing funds is "not as easy as it used to be, let's just put it that way."

When the budget was announced in May, Mayor de Blasio voiced his continued belief that the Member Item system should be eliminated. "I do think it's time to end Member Items," he said in a [press conference](#). ([Transcript](#)) "I think that's the smart path going forward. But I also respect that the Council has its own prerogatives." As of this writing, de Blasio has not called on the Council for support in fulfilling his campaign promise to eliminate them.

Still, some councilmembers have gone on the record in support of abolishing the member item system. Jumaane Williams, who represents parts of Brooklyn, spoke in opposition to member items at the [council hearing](#) for the rules changes earlier this year. (In the

February meeting, he expressed his support for member items. Williams could not be reached about the discrepancy for this article.)

"I wanted just to make sure -- I was clear that I'm unhappy about the City Council has discretionary funds," he said. "I'm hoping people will begin to support this because [Member Items are] going to groups and community organizations that would not otherwise get this funding."